

Babin,

Milton

REVOLT OF THE JUDGES
AGAINST THE CONSTITUTION

BY MILTON L. RABIN

Waukegan, Minn.

There appeared in the Summit, Minn. SUN in December 1900 and January 1901 a series of articles under the title of "Revolt of the Judges Against the Constitution."

Rigadier General Eugene Sharp Babb of Baltimore, Maryland, a graduate of the University of Minnesota and Columbia University and a veteran of two wars, wounded in the battle of the Bulge, thought so highly of the material in these articles that he had 100 copies printed of the complete text.

I sent one of these copies to the McGraw Edison Corporation of Elgin, Illinois, and Mr. Max McGraw, president of the Corporation, sent it to Mr. Charles Edison of West Orange, N. J., the only son of Mr. Thomas A. Edison.

Under date of December 29, 1900, Mr. Charles Edison wrote me as follows:

DEAR MR. RABIN:

Mr. Max McGraw has forwarded to me your letter of December 4th, 1900, and the copy of your article, "Revolt of the Judges Against the Constitution".

What you said in 1888 applies equally to the present Supreme Court, only more so.

You may not know that the old Edison Laboratory, and everything in it, is now owned and operated by the National Park Service as a shrine. Documents referring to my father, Mr. Edison, are there in great numbers and are constantly being accumulated.

Unless you prefer otherwise, I suggest that your manuscript be preserved there. It would still be available for Company use should occasion arise.

Thank you for forwarding this manuscript to us, and with best wishes for the New Year.

Sincerely yours,

CHARLES EDISON

NOTE: Under date of January 5th, 1901, I wrote Mr. Edison that my manuscript could be preserved as he had requested.

Reprinted from The Summit, Minn. SUN for January 11, 1901.

Milton L. Babin
Maskish, Minnesota

ADMINISTRATIVE FILE

Babin, Milton L.

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REVOLT OF THE JUDGES AGAINST THE CONSTITUTION

In the issue of the Saturday Evening Post, date of March 12, 1938, an article was published, entitled: "Who, Then, is the Liberal".

It is stated in that article that Mr. Justice McReynolds has always been a "Champion of Liberty," that Justice McReynolds has never failed to lift his voice in behalf of individual rights and personal liberty, as described by the Declaration of Independence and ratified by the Constitution; also he never fails to strike a blow for liberty.

Mr. Herle Thorpe, the author, describes the "sledge hammer blows" he has struck when his Judicial ire has been aroused over unconstitutional invasion of the liberty of the individual.

Mr. Herle Thorpe, the author of the article, is a very able man and should know far better than to write such a fulsome article without making a thorough study of all of the legal decisions in which Justice McReynolds has participated while sitting as a Member of the U.S. Supreme Court. Mr. Herle Thorpe betrays a very dense ignorance of some of Justice McReynolds' defiances of the Constitution in two of the most momentous decisions ever issued forth from the U.S. Supreme Court.

In June, 1931, the Constitutionality of the Minnesota Newspaper Gag Law came before the Court, and here is how the Judges voted.

FOR THE CONSTITUTIONALITY OF THE LAW:

Mr. Justice McReynolds
Mr. Justice Butler
Mr. Justice Sutherland
Mr. Justice Van Devanter

FOR THE UNCONSTITUTIONALITY OF THE LAW:

Mr. Chief Justice Hughes
Mr. Justice Holmes
Mr. Justice Roberts
Mr. Justice Stone
Mr. Justice Brandeis

Did Mr. Justice McReynolds strike any "Sledge Hammer Blows" for the Constitutional rights of the individual in that very momentous case? He did not, he utterly failed to use his famous "Sledge Hammer."

This Minnesota Newspaper Gag Law was the most damnable invasion of the rights of the individual that was ever placed on the Statute Books of any state. A member of the Minnesota Legislature had been severely criticized by one Morrison, an Editor of a Duluth newspaper.

This "Law Giver" introduced a Bill into the Minnesota Legislature to suppress any newspaper publishing any scandal about a politician or other like ilk, and this newspaper was to be suppressed, not for one issue, but for all future issues, for all time, without a trial by jury in utter defiance of the Constitution. Editor Morrison died before this infamous law could get its hooks into him.

In 1927, the Saturday Press of Minneapolis published some scathing attacks on County officials of Hennepin County for crime conditions in Minneapolis. County Attorney Floyd B. Olson at once appeared before a Judge and this newspaper was suppressed for all future issues under the infamous Minnesota Newspaper Gag Law for telling the truth about crime conditions in Minneapolis, a city that, along with St. Paul, has been described as the two worst crime spots in the United States, and the man who described those two cities in that manner was Homer Cummings, U. S. Attorney General.

Later, three newspaper editors, Howard Guilford, Walter Liggett and Usher Kasneman were assassinated on the streets of that city for exposing crime conditions.

The assassins of these three newspaper Editors have never been apprehended. One very notorious underworld character was indicted and tried for the brutal assassination of Editor Walter Liggett. He was acquitted by a jury; he had a perfect mathematical alibi. The police said there was only one thing the matter with his alibi - it was too perfect.

Let us look into the Constitutional lawlessness of this damnable Minnesota Newspaper Gag Law:

The Fifth Amendment to the Constitution states that "no person shall be deprived of his life, liberty, or property without due process of law." Now suppressing a newspaper under the Minnesota Newspaper Gag Law is depriving a person of his property without due process of law. The arbitrary lawless act of a Judge sitting like a Star Chamber Judge in the terrible times of the Tudor and Stuart despots of England, is not due process of law.

It might be said that suppressing a newspaper is not depriving a person of his property. The fact that the newspaper no longer exists is the deprivation of his newspaper as a property; true, he still has the personal property left but that is not a newspaper; when publication ceases to exist by arbitrary order of a lawless Judge the newspaper ceases to exist as a property. The First Amendment to the Constitution guarantees freedom of the Press. Is this freedom of the Press when a Judge is given power by an infamous law, conceived in iniquity, to instantly suppress a newspaper which is hostile to a group of politicians? And why hostile? Because these politicians are reeking with corruption. Why suppress a newspaper without a trial by jury? A person is allowed by Constitutional Law, when charged with an infamous crime, such as murder, rape, incest, robbery, theft, arson and other crimes to have a jury trial; yet when a righteous Editor assails crime conditions in Minnesota, he must be suppressed without a

trial by Jury. Minnesota never needed a Minnesota Newspaper Gag Law. Its Statute Law on libels is the most severe in the United States; yet even that savage law allows a trial by Jury.

It is most evident that the Legislature that passed this Minnesota Newspaper Gag Law well knew a Judge's mind. Judges all through the ages have loved arbitrary power.

Mr. Robert R. McCormick, the publisher of the Chicago Tribune, was so incensed over the iniquity of this Gag Law and the suppression of the Saturday Press, that he personally put up the money to appeal this case to the U.S. Supreme Court. I have already given the result of that appeal.

Mr. Justice Butler read the decision of the dissenting Justices. Did he quote any Constitutional Article in justification of his opinion? He did not, because there was none. He merely said that the Judges ought to have the power to suppress newspapers that commonly publish scandals about politicians and other such ilk. The telling the truth about vicious crime conditions in Minnesota was a public scandal, so if the scandals were suppressed the voters would think that their politicians had halos around their heads.

I will now comment upon another damnable case in which Justice McReynolds utterly failed to strike any "Sledge Hammer Blows" for the Constitutional rights of the individual.

In February, 1936, the U.S. Supreme Court upheld unanimously the death sentence conviction of an escaped convict named Gooch, who had captured two sheriffs in Texas and transported them to Arkansas for his only method of escaping a posse. He was captured and charged with violating the Lindbergh Law. Capturing and kidnapping two sheriffs are absolutely two different things. Kidnapping is the premeditated plan of abducting a person for the purpose of a ransom; Gooch captured these two sheriffs for his own protection, not for a ransom.

Gooch in his appeal claimed he had been denied due process of law on his conviction. Upon what grounds did the U.S. Supreme Court deny his appeal? Upon the grounds that the Congress had the Constitutional power to enact the Lindbergh Law, under Article 1, Section 8, paragraph 3, which states that, "The Congress shall have the power: To regulate Commerce with foreign nations and among the several states, and with the Indian Tribes."

I ask, has the Lindbergh Law got anything to do with Commerce? I answer: By the Living God, No. The Lindbergh Law deals with human rights, not with Commerce. Commerce has to do with trade, industry, business, the transportation of goods from one state to another, or to foreign countries. The fact that Gooch had transported these two captured Sheriffs, whom he disarmed, is not the transportation of goods; it was the transportation of two human beings. (Two Texas Sheriffs; a hell of a lot of difference.)

Another thing: Gooch was convicted and executed because he injured one of the legs of a Sheriff, not for the mere act of capturing (so-called kidnapping).

Let us examine three articles of the Constitution which absolutely protected Gooch against any capital punishment. Gooch injured the leg of the Sheriff in Texas. What does the Constitution say about that fact?

I quote Article 3, Section 2, paragraph 2: "The trial of all crimes, except in cases of impeachment, shall be by Jury, and such trial shall be held in the State where the said crimes shall have been committed."

I quote Article 6, Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed."

The fundamental law of the land states that this offense against the Sheriff's leg shall be tried in the State of Texas where the offense was committed. It was at most a gross misdemeanor. When Gooch captured and disarmed these two Texas sheriffs, he could not do it gently, he had to be tough. This case was not tried in Texas at all; it was tried in Oklahoma, and it was tried as a capital offense.

I quote Article 8, Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." Now the death penalty was inflicted on Gooch for injuring the Sheriff's leg, in positive defiance of the 8th Article, which states that unusual punishment shall not be inflicted. It is most certain that hanging a man for injuring a Texas Sheriff's leg is an unusual punishment. It has never been inflicted in this country before, or any other country where the forms of Constitutional Government rule.

To meet the requirements of Constitutional Law, there should have been two indictments against Gooch, one in Texas for injuring the Sheriff's leg, and the other in the nearest Federal Court, which in this case was in Oklahoma.

He would have been found guilty of two separate offenses: an assault case in Texas and a capturing of two Texas Sheriffs and transporting them into Arkansas. Both of these convictions would have been penitentiary sentences, not the death penalty.

I quote Article 6, Paragraph 2 of the Constitution: "This Constitution and the laws of the United States, which shall be made in pursuance thereofshall be the Supreme Law of the land."

This Article is the most significant fact of the whole Federal Constitution. It positively states that only those laws can be passed by Congress, which shall be "in pursuance thereof"; not a crude hysterical law, such as the Lindbergh Law passed during the wave of hysteria over the kidnapping and brutal murder of the Lindbergh infant.

It is an accomplished fact that this kidnapping hysteria actually riddled four Articles of the Constitution with legal buckshot, the 3rd Article, the 6th Article, the 6th Amendment, and the 8th Amendment.

The third paragraph of the 6th Article that forever holds all legislative, judicial and executive officers true to the whole of the Constitution, states that they shall be bound by oath or affirmation to support the Constitution.

It will be noted that the Constitution states that they are to "support" the Constitution. It is evident that these most solemn Judges have forgotten their oath of office.

There is not one word in the Constitution that states that these Judges must interpret the Constitution. Their oath compels them to preserve, protect and defend the Constitution without any mental reservations whatsoever. If they don't like our Constitution, let them get the hell out of this country — Russia can use them.

Has the Lindbergh Law been successful in its assumed purposes? These are the facts: Before the enactment of this law, there was one death of a kidnapped victim, the Lindbergh infant. Since the enactment of this law there have been five deaths of the kidnapped victims: Ross, Mrs. Parsons, Matson boy, Levine boy and the Cash boy.

It is a fact that this Lindbergh Law is a positive invitation to commit murder. The penalty is the same for an injury to the victim as for the death of the victim. If the kidnapped victim is killed, there is no witness to testify against the kidnapper. In the Gooch case he actually was hanged for his leniency to the two Sheriffs. If he had killed them, the penalty would not have been any greater, and at least he would not have had two witnesses to testify against him; and there is a strong probability that he never would have been apprehended. In the Matson case, the Levine case, and the Parsons case, the kidnappers and brutal murderers have not been apprehended.

An appeal was made to the President of the United States by Gooch for Executive clemency in that this savage punishment to be inflicted upon him was way out of proportion to the offense he had committed.

Mr. President Roosevelt refused to grant him Executive clemency, saying that the laws of the United States must not be made "nugatory"; so poor, friendless, forlorn Gooch went to his terrible doom on the scaffold.

In 1936, the identical year that Gooch was executed, there was a great strike for three months on the L and A Railroad Company, operating in Texas, Arkansas and Louisiana. News items stated that twelve men were killed, three bridges burnt and two trains wrecked by the strikers. These murders, these wrecking of trains, and burning of bridges are all in utter violation of the laws of the United States. The wrecking of trains and the burning of railroad bridges are Federal felonies as they interfere with the transportation of the United States mails and interrupt Interstate Commerce.

I quote from Volume 6, page 353, of his history of the United States: "When laws clash, the latest law is rightly held to express the corrected will of the Legislature; but the Constitution is the fundamental code, the law of laws: An Act of the Legislature at variance with the Constitution is pronounced void: an opinion of the Supreme Court at variance with the Constitution is equally so."

God bless you and keep you forever, George Bancroft, in the eternal regions of the blest for that beautiful, just exposition of the Constitution.

It might be well to say, why I am interested in the Constitutional rights of a convict like Gooch. This man's Constitutional rights are my Constitutional rights. If they can take away Gooch's Constitutional rights, they can take away my same rights and under any pretext or no pretext at all, and I will very soon show how my Constitutional rights have been taken away from me, without any pretense of a pretext at all. I will pause awhile on my Constitutional rights while I go on with Gooch's human rights.

I quote from the man who assailed English Constitutional lawlessness and political corruption with more vigor and power than any man who ever stood in the path of political lawlessness, Junius, (Sir Philip Francis) in 1771 wrote: "I regard the legal liberty of the meanest man in Britain as much as my own, and would defend it with the same zeal. I know we must stand or fall together."

Thomas Erskine, the most eloquent advocate who ever addressed an English Jury, in his celebrated defense of James Hadfield, who was indicted and tried on a charge of high treason for attempting to kill the King of England, said in the course of that remarkable trial that "the wisdom of the Law is greater than any man's wisdom."

So say I, the wisdom of the fundamental Law of the Land, the Constitution, is greater than the wisdom of the Chief Justice and the eight Associate Justices of the U. S. Supreme Court.

The greatest historian who ever lived, Thucydides, who was also a statesman, a general, a philosopher, and an industrialist (he owned gold mines in Thace) gives us this vivid truth to guide all people in a crisis of the laws. I quote:

"Indeed, men too often take upon themselves in the prosecution of their revenge to set the example of doing away with those general laws to which all alike can look for salvation in adversity, instead of allowing them to subsist against the day of danger when their aid may be required."

I am a dairy farmer and truck gardener in the extreme northern part of Minnesota, in Koochiching County.

In 1936, a WPA Project located one-quarter mile from my farm and proceeded to build a Government Dam in the County Drainage Ditch. I protested that these Drainage Ditches were our property, paid for, interest and principal, over a period of twenty years by Special Assessments.

I urged that this particular Government Dam built on a ridge one-quarter mile from my land would inundate my land and that of all other settlers. My objections were arbitrarily brushed aside, and in all 176 dams were built in these Drainage Ditches.

Come the next year, 1937, a very wet year and my land was inundated by these impounded waters until the last of August when a logging boss whose processed timber was in a lake of water, blew it to pieces with a heavy charge of dynamite. By the time this Government Dam was blown up, my crop was well nigh ruined by stagnant water. I got six bushels of potatoes, 12 bushels of rutabagas and 20 bushels of sweet corn. The next year, 1938, this Government Dam was rebuilt better than ever.

The Federal Government never had any legal authority of any kind to construct these Government Dams in our Drainage Ditches. Their pretext was that they wanted to conserve the water resources of this area. The fact is that the water resources in this area never did need conserving; there always has been plenty of water. The fact that over \$4,000,000.00 was spent in building these County Ditches, proved they were needed.

What about our Constitutional rights in this matter? Article 5 Amendment states that "no person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

It will be urged that these Ditches are not private property, they are public property. This contention does not hold true in fact; because these Ditches were paid for by the settlers and other land owners whose lands were benefitted by these Ditches.

The execution of Gooch for a crime he never committed at all, was an act of Judicial barbarity.

Judge Samuel Sewall at Salem, Massachusetts, in 1692, condemned nineteen women to death as witches. How did he justify this barbarous penalty? I quote his justification from Exodus, Chapter 22, verse 18, as follows: "Thou shalt not suffer a witch to live."

We have in this case the damned error, sentencing nineteen women to a shameful death as witches; we have the sober brow (Judge Sewall); we have the text, "Thou shalt not suffer a witch to live." The terrible spirit of the Puritan Judge Sewall lives today in the souls of the nine Judges of the U.S. Supreme Court, who approved the lawless execution of Gooch by quoting a text from the Commerce Clause of the Constitution.

What are we to think of the political wretch who refused Gooch Executive Clemency on the grounds of the statement that the laws must not be made nugatory; whereas, at the same time, the laws were being made nugatory in Louisiana a thousand times worse than Gooch's petty crimes.

I quote from Article 2, paragraph 8, the oath of office, President Roosevelt swore to on being inducted into office:

"I do solemnly swear (or affirm) that I will faithfully

execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

President Roosevelt, in the Gooch case, was a cowardly traitor to his oath of office.

It will be said in answer to my heated strictures upon Judicial villainy, that this man Gooch was a mere criminal and lived a life of crime anyhow, that Judicial injustices are never inflicted upon men of worth and character. In answer to such persons who may urge such a defense of Judicial villainies, I will very briefly analyze one of the most remarkable articles on Judicial injustices ever to be published in this country:

On September 27, 1930, there appeared in the Saturday Evening Post, an interview by Thomas A. Edison, entitled: "Patents, Profits and Pirates." This interview was written up by Romsen Crawford, a lifelong friend of Thomas A. Edison. This interview is so crowded with startling exposures of Judicial villainy practiced upon Edison all during his inventive lifetime that it is difficult to condense it all and still preserve all the sense of that remarkable interview.

Mr. Romsen Crawford had asked Mr. Edison why he was not the Croesus of the modern age. Said Edison in reply: "Nearly ten billion dollars are invested in modern industries which developed from ideas embodied in my inventions and my patents. In my lifetime I have taken out 1,180 patents to date. Counting the expense of experimenting and fighting for my claims in Court, these patents have cost me more than they have returned me in royalties. I have made money through the introduction and sale of my products as a manufacturer, not as an inventor."

How was this colossal injustice inflicted upon Thomas A. Edison? Answer: By Patent Pirates. They hire a shyster lawyer, sharp as the devil, who goes into Court and enjoins the inventor from manufacturing anything from his own creations and formulas, even when the rightful inventor had in his hands a Patent issued by the United States Government. Then the Judge would allow the Patent Pirate to manufacture Edison's invention, (for the good of mankind) pending litigation which often lasted ten, twelve or fourteen years. In his invention of the incandescent lamp, he had to fight in the courts for fourteen years to establish his rights as the inventor. Edison and his associates had to spend over a million dollars to prove their rights to the incandescent light, even though his claims had been duly vouched for by the U.S. Patent Office. Recollect that this was not just one Judicial injustice that was inflicted upon Edison; it happened in everyone of his epoch-making inventions. Even when his great fame as the mightiest inventor of all time had traveled all around the earth, the same injustice was heaped upon him. The soul of this extraordinary man, Edison, cries out in every part of that famous interview in bitter indignation against the legal Judicial devilry that was inflicted upon him for a period of over fifty years of that inventive genius' life.

What are we to admire most, his tremendous genius, or that moral heroism that could continue to struggle undaunted against Judicial injustice until his last day.

This man, Thomas A. Edison, will go down the annals of history as America's one great contribution to the five greatest geniuses who ever trod this earth: Euclid, Archimedes, Newton, Shakespeare, and Edison.

What type of men are elevated to Judicial power who can continue to inflict cowardly injustice upon Edison until his last day?

These men were shyster lawyers before their elevation to the Bench. As shyster lawyers, they had to eat, they had to wear clothes, and they had to have a roof over their heads, so they had to grab any kind of business they could get their hands on, right or wrong, made no difference to them.

One of the greatest writers of all time upon political and Judicial villainy, Junius, (Sir Philip Francis) has pilloried for all time, the mental and moral qualifications of these shyster lawyers and shyster Judges in these burning words. I quote:

"As a practical profession, the study of the law requires but a moderate portion of abilities. The learning of a pleader is usually upon a level with his integrity.

"The indiscriminate defense of right and wrong contracts the understanding, while it corrupts the heart. Subtlety is soon mistaken for wisdom and luxury for virtue. If there be any instances upon record (as some there are undoubtedly of genius and morality united in a lawyer) they are distinguished by their singularity and operate as exceptions."

I will note the one exception and he came after the time of Junius. Thomas Erskine, once a sailor, once a soldier, then the most eloquent advocate who ever pleaded before an English Jury in defense of human rights.

The eloquent defender of Thomas Paine, the Earl of Thanet, the Dean of St. Asaph, the poor shoemaker, Hardy, the poor soldier Hadfield, the publisher, Stockdale, and many others who were in peril of their lives or their persons in the terrible days of the legal Reign of Terror in England at the time of the French Revolution.

Note: This article was written in 1938 and submitted to the Editor of the Saturday Evening Post, Mr. Wesley Minns Stout, for publication, and rejected.

Justices who voted on the Gooch case: Hughes, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts, Cardozo, Van Devanter.

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ADMINISTRATIVE FILE

Babin, Milton L.

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March 30, 1962

Mr. Milton L. Babin
Wakish, Minnesota

Dear Mr. Babin:

Thank you for your letter of March 27th, addressed to President Hoffa in which you sent him copy of "Vermont's Blackest Crime - Still Unsolved After Four Years".

Enclosed I am returning the copy of the above that you sent us, plus the \$1.00 you enclose as it was not needed.

I shall bring the contents of your letter to President Hoffa's attention upon his return to the city.

Very truly yours,

H. J. Gibbons
Executive Assistant
to the General President

HJG/mc

Enclosures

Washish Minnesota
March 27 1962

Mr James P. Hoffa
Washington D.C.

Dear Mr Hoffa: I am inclosing a political
article entitled, Vermont's Blackest Crime
Still Unsolved After Four Years.

This narrative contains an account of one
of the most sinister murders committed in
this country and the successful efforts of
the black hearted citizens of Newbury, Vermont,
to protect the identity of these murderous thugs.
U.S. Attorney General W.F. Rogers refused to take
any action in the solution of this crime until I
got Vice President Nixon to put some pressure on him.
I hope it that if I gave you any advice to use

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this material in your defense in your
coming trial at Orlando, Florida, I would be
charged with obstructing the Administration of
Justice

However were I in your circumstances I would
in my defense print hundreds of thousands of
this article and circulate it throughout Florida
from whom the jury will be selected to set in judgment
on you. Also, I would in person broadcast
it over the radio, while the Court was not in
session. You are of course to use your
own judgment in what action you will take.

I am 86 years old and together with my wife
who is 79 years old we live on a timber farm,
[46 acres in timber, 14 acres of lowland] in northern
Minnesota 36 miles south of the Canadian frontier.
We put in a big garden every year of various,

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potatoes, carrots, beets, spinach, turnips,
rutabagas, parsnips, cabbages, squash,
pumpkins, watermelons, muskmelons and sweet corn.
My wife sends over 400 quarts of vegetables
and fruit every year.

We live so well that my neighbor says that
Baben and his wife live better and cheaper
than anybody on the Washburn place, with the
exception of the Baudon brothers who live on venison
and white fish out of Red Lake.

In your defense, you may use my material
in any way you see necessary without any
obligation to me whatsoever.

I am inclosing one dollar for which kindly have
your typist type me one copy to replace the
copy I am giving you. Sincerely yours
Milton I. Baben